



Bulletin

2013-06B

LOCAL OPTION EXEMPTIONS
FOR
RESEARCH AND DEVELOPMENT COMPANIES
AND
DISREGARDED LIMITED LIABILITY COMPANIES

(Supersedes Bulletin 2007-02B)

TO: Assessors, Mayors, Selectmen, City/Town Managers, Finance Directors and Clerks

FROM: Kathleen Colleary, Chief, Bureau of Municipal Finance Law

DATE: December 2013

SUBJECT: Local Option Property Tax Exemptions

This *Bulletin* updates information provided in *Bulletin* 2007-02B regarding the local acceptance personal property tax exemption for research and development (R&D) companies and explains a local acceptance personal property tax exemption for some single member limited liability companies (LLCs) engaged in manufacturing or R&D. See [G.L. c. 59, §5\(16\)\(3\)](#); [Technical Information Release 10-15](#), *Certain Local Property Tax, Personal Income Tax, Corporate Excise, and Tax Administration Changes in "An Act Relative to Economic Development Reorganization."* This *Bulletin* also requires that local acceptance or revocation of the exemptions be reported to the Division of Local Services.

As explained, there are two separate and independent local options that allow communities to give some business entities the same personal property exemptions as classified manufacturing corporations. Manufacturing corporations, which include non-corporate business entities (LLCs, partnerships and others) treated as corporations for federal and state tax purposes, that are classified by the Department of Revenue as engaged in manufacturing are afforded significant personal property tax exemptions. They are exempt from local property taxes on all tangible personal property except their (1) poles, wires, underground conduits and pipes and (2) electric generating plants (except co-generating plants of 30 megawatts or less, electric generating plants classified as manufacturing on or before January 1, 1996 and parts of electric generating plants qualifying as pollution control devices under [G.L. c. 59, § 5\(44\)](#)). [G.L. c. 59, § 5\(16\)\(3\)](#).

**LOCAL OPTION EXEMPTION
FOR
RESEARCH AND DEVELOPMENT COMPANIES**
[General Laws Chapter 59, § 5\(16\)\(3\)\(i\)](#)

(Supersedes Bulletin 2007-02B)

Exemption Qualifications

The first local option lets communities give research and development (R&D) corporations the same personal property exemptions as classified manufacturing companies. Research and development includes experimental or laboratory activity having as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products and the development or improvement of methods for producing products. It does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities or research in connection with literacy, historical or similar projects. R&D corporations must derive more than two-thirds of their receipts, or incur more than two-thirds of their expenditures, attributable to Massachusetts from R&D activity during the taxable year. In determining the amount of R&D activity of a company, all its manufacturing expenditures are excluded from the total, whether or not the manufacturing activity is substantial. Receipts from R&D include those from R&D services, royalties or fees from the licensing of patents, know-how or other technology developed from R&D. See [G.L. c. 63, § 42B](#), which defines manufacturing and R&D corporations under [G.L. c. 59, § 5\(16\)\(3\)\(i\)](#).

Exempt Property

Under this local option, the property tax exemption available for property owned by a classified manufacturing corporation would also extend to the property owned by R&D corporations. As a result, corporations, and non-corporate entities treated as corporations for state tax purposes, that are classified by the DOR as engaged in R&D will be assessed personal property taxes only on their (1) poles, wires, underground conduits, pipes and (2) electric generating plants (except co-generating plants of 30 megawatts or less, electric generating plants classified as manufacturing on or before January 1, 1996 and parts of electric generating plants qualifying as pollution control devices under [G.L. c. 59, § 5\(44\)](#)). [G.L. c. 59, § 5\(16\)\(3\)](#). Any other tangible personal property they own will be exempt. Ordinarily, a corporation engaged in R&D is taxable for its (1) poles, wires, underground conduits, pipes and (2) machinery used in the conduct of business. A limited liability company (LLC) engaged in R&D is usually taxable for all its personal property or, if the LLC is treated as a corporation for state tax purposes, its (1) poles, wires, underground conduits, pipes and (2) machinery used in the conduct of business.

Classification of R&D Companies

Corporations, or non-corporate entities treated as corporations, that are engaged in R&D and have personal property situated in and taxable by a community that has accepted the local option exemption must apply to the DOR for classification as a R&D corporation by January 31 on State Tax Form 355RD. Only classified companies are entitled to the exemption.

LOCAL OPTION EXEMPTION
FOR
SINGLE MEMBER DISREGARDED LIMITED LIABILITY COMPANIES
[General Laws Chapter 59, § 5, Clause 16\(3\)\(ii\)](#)

Eligibility

By local option, communities may also give some “disregarded” limited liability companies (LLCs) the same personal property exemptions as classified manufacturing corporations. If this option is accepted by a city or town, it applies to any LLC that:

- (1) has its usual place of business in Massachusetts,
- (2) (a) is engaged in manufacturing in Massachusetts and whose sole member is a classified manufacturing corporation, or (b) is engaged in R&D in Massachusetts and whose sole member is a classified R&D corporation,
- (3) is a disregarded entity as defined in [G.L. c. 63, § 30.2](#), and
- (4) has personal property situated in and taxable by the city or town.

The LLC is a business structure allowed by Massachusetts law. It can have one or more owners, which are called members. The members may be corporations, including manufacturing or R&D corporations. The LLC is a separate legal entity, however, so its corporate members are not the owners of the LLC’s personal property.

The property tax treatment of personal property owned by LLCs (or other non-corporate entities) depends on their classification for state tax purposes, which in turn is governed by their federal tax status. Any LLC that files federally as a corporation is treated as a business, manufacturing or R&D corporation for state tax purposes based on the nature of its activities and it gets the same personal property tax exemptions as those corporations. If the LLC files federally as a partnership, it is treated as a partnership for state tax purposes and is taxed on all of its personal property. If it files federally as a disregarded entity, it is treated as a branch or division of its owner for state tax purposes. [830 CMR 63.30.3](#). A disregarded LLC does not qualify for personal property tax exemptions afforded corporations either, even if its sole owner is a corporation and engages in the same activities. It is taxed on all of its personal property.

Exempt Property

Under this local option, however, the property tax exemption available for property directly and actually owned by a classified manufacturing corporation, or by local option, a classified R&D corporation (see above), would also extend to the property owned by a disregarded LLC that is wholly owned by the classified manufacturing or classified R&D corporation.

As a result, if the option is accepted, a disregarded LLC would be assessed personal property taxes only on its (1) poles, wires, underground conduits and pipes and (2) electric generating plants (except co-generating plants of 30 megawatts or less, electric generating plants classified as manufacturing on or before January 1, 1996 and parts of electric generating plants qualifying as pollution control devices under [G.L. c. 59, § 5\(44\)](#)). [G.L. c. 59, § 5\(16\)\(3\)](#). Any other tangible personal property it owns will be exempt.

Determination of Classification of Corporate Sole Member

The sole corporate member of a disregarded LLC that is engaged in manufacturing or R&D and has personal property situated in and taxable by a community that has accepted the local option exemption must apply to the Department of Revenue (DOR) for classification as a manufacturing or R&D corporation by January 31 on State Tax Form 355Q (manufacturing) or State Tax Form 355RD (R&D). In determining whether the member corporation qualifies for classification, the attributes and activities of the LLC along with the member's other attributes and activities are taken into account. Only disregarded LLCs that are wholly owned by classified corporations are entitled to the exemption.

EXEMPTION PROCEDURES

Acceptance

The R&D corporation or single member disregarded LLC exemption applies only in cities and towns that accept that particular exemption of [G.L.c. 59, § 5\(16\)\(3\)](#). The exemptions are separate and independent. Communities may accept none, one or both.

Acceptance is by majority vote of the municipal legislative body, subject to local charter. [G.L. c. 4, § 4.](#)

The exemption applies to personal property assessments as of the January 1 following the acceptance vote, unless a later year is specified in the vote. For example, an acceptance voted after January 1, 2013 and before January 1, 2014 would be effective for taxes assessed as of January 1, 2014 for fiscal year 2015. The following or similar language may be used for the acceptance vote:

VOTED: That the city/ town accept General Laws Chapter 59, § 5, (Clause 16(3)(i), which exempts from taxation certain personal property of companies that are classified by the Department of Revenue as research and development corporations) OR (Clause 16(3)(ii), which exempts from taxation certain personal property of single member disregarded limited liability companies that are classified by the Department of Revenue as manufacturing or research and development corporations), to be effective as of January 1, _____ for taxes assessed for fiscal year (_____).

Revocation

Acceptance of the R&D corporation or single member disregarded LLC exemption may be revoked, but the community must wait at least three years. Revocation is also by vote of the community's legislative body, subject to charter. [G.L. c. 4, § 4B.](#)

The exemption will end for personal property assessments as of the January 1 following the revocation vote, unless a later fiscal year is specified in the vote. For example, a revocation voted after January 1, 2013 and before January 1, 2014 would be effective for taxes assessed as of January 1, 2014 for fiscal year 2015. The following or similar language may be used for the revocation vote:

VOTED: That the city/ town revoke its acceptance of General Laws Chapter 59, § 5, (Clause 16(3)(i), which exempts from taxation certain personal property of companies that are classified by the Department of Revenue as research and development corporations) OR (Clause 16(3)(ii), which exempts from taxation certain personal property of single member disregarded limited liability companies that are classified by the Department of Revenue as manufacturing or research and development corporations), to be effective as of January 1, _____ for taxes assessed for fiscal year (_____).

Notifications

The city or town clerk must notify the [Municipal Data Management/Technical Assistance Bureau](#) if the [R&D corporation](#) or [single member disregarded LLC](#) exemption is accepted or revoked. The notice should be submitted as soon as possible after the acceptance or revocation vote.

QUESTIONS

Assessors or other local officials with questions about these local options may contact the Division of Local Services' legal staff at 617-626-2400.

However, we ask that you please not refer taxpayers with questions about DOR classification as a manufacturing or R&D corporation to the Division. Taxpayers with questions about DOR classification requirements and application procedures must contact the Department of Revenue's Customer Service Call Center at 617-887-MDOR or 800-392-6089 (toll-free in Massachusetts).